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Inventor: McKee

REMARKS/ARGUMENTS

Claims 2, 3 and 4 have been combined into independent claim 1 as suggested by the Examiner in the 10/14/04 phone conference. Claims 6-8 and 11-16 depend from claim 1.

Claims 1, 2, 3 and 5 have been combined into new independent claim 17 as suggested by the Examiner in the 10/14/04 phone conference. New claims 18-26 depend from claim 17.

Claims 1, 6-8 and 11-16 remain in the application. New claims 17-26 have been added.

The examiner has acknowledged that claim 13 is directed to allowable subject matter.

The newly added claims, 17-26 are directed to caulking tube nozzle sealing caps constructed to cut threads onto the outer surface of the caulking tube nozzle when applied, these features are not shown or taught in the references of record and should be allowable.

In response to the Office Action of Sep. 13, 2004, Applicant

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requests re-examination and reconsideration of this application for patent pursuant to 35 U.S.C. 132.

**Rejections under 35 USC 102**

The Examiner has asserted that Claims 1-6 and 11 of the instant invention are anticipated by Ray U.S. Patent No. 5,248,071. The Examiner's position is respectfully traversed.

Ray is directed to a combination nozzle and cap assembly for replacement of the factory supplied nozzle provided with a tube of caulking. For replacement, the Ray nozzle requires the caulking tube to be supplied with a removable nozzle. Most caulking tubes currently available are supplied with integrally formed or non-removable nozzles. In the event the nozzle supplied on the caulking tube is removable and replaceable. The Ray nozzle requires threads to be preformed on the external surface of the replacement nozzle for cooperation with the sealing cap.

In contrast, the instant invention does not require the caulking tube to be supplied with a removable and replaceable nozzle. The instant invention cooperates with a smooth or stepped external nozzle surface supplied on tubes of caulking from the factory. The instant invention cuts or forms reusable threads on the nozzle's external surface as the sealing cap is rotatably

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engaged with the nozzle. Ray does not disclose nor teach a sealing cap which forms or cuts threads on the external surface of a caulking tube nozzle. Absent any motivation found within the prior art, it is respectfully submitted that the Examiner's reference does not anticipate the instant invention.

**Rejection under 35 USC 103(a)**

Claims 7-10 stand rejected as obvious over Ray U.S. Patent No. 5,248,071 in view of McIntosh U.S. Patent No. 4,307,821. The Examiner's position is respectfully traversed.

Ray is directed to a combination nozzle and cap assembly for replacement of the factory supplied nozzle provided with a tube of caulking. For replacement, the Ray nozzle requires the caulking tube to be supplied with a removable nozzle. Most caulking tubes currently available are supplied with integrally formed or non-removable nozzles. In the event the nozzle supplied on the caulking tube is removable and replaceable. The Ray nozzle requires threads to be preformed on the external surface of the replacement nozzle for cooperation with the sealing cap.

McIntosh is directed to a container closure assembly wherein the container is supplied with an elongated externally threaded

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neck and a discharge opening closed by a membrane. The lower part of the cap includes a tear-away collar which is removed so that the cap may be threaded further onto the threaded stem to fracture the membrane to dispense the contents of the container.

Ray does not disclose or teach forming or cutting threads on the external surface of a caulking tube nozzle and McIntosh is directed to opening a container to dispense its contents and not to sealing an opened container of caulking to preserve its contents for later use. Absent any motivation found within the prior art, it is respectfully submitted that the Examiner's combination of references can only be deemed hindsight reconstruction utilizing the instant disclosure, which is of course prohibited.

Claims 14-16 stand rejected as obvious over Ray U.S. Patent No. 5,248,071 in view of Hammes U.S. Patent No. 3,480,169. The Examiner's position is respectfully traversed.

Hammes is directed to sealing the pre-threaded neck of a container. The seal provided by Hammes is constructed to engage the narrow top surface of the threaded neck to provide sealing. The Hammes cap is provided with a plug that extends downwardly from the caps top inner surface to support the inner diameter of the o-ring shaped seal. The deformation forces associated with

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compressing the O-ring between the top surface of the neck and the cap forces cause the seal to move or flex inwardly away from the top surface of the threaded neck resulting in improper sealing. Still yet, the Hammes construction requires the upper surface of the threaded stem to be flat and perpendicular to the threaded surface.

In contrast, the o-ring seal of the instant invention cooperates with the outer frustoconical surface of the caulking tube nozzle. This construction permits the end surface of the nozzle to be cut at any desired angle. In addition, this construction prevents the O-ring from deflecting away from the sealing surface. This construction is best exemplified in Figure 7 of the instant application. Absent any motivation found within the prior art for this type of construction, it is respectfully submitted that the Examiner's combination of references can only be deemed hindsight reconstruction utilizing the instant disclosure, which is of course prohibited.

Claims 12 stands rejected as obvious over Ray U.S. Patent No. 5,248,071 in view of Oshida U.S. Patent No. 5,552,047. The Examiner's position is respectfully traversed.

Oshida is directed to a hollow filament blood processing

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apparatus. The device includes caps fixedly attached to a housing. Each cap is provided with a double elastomeric seal to prevent blood from leaking out of the housing. The elastomeric seals are positioned within the cap to engage a flat end surface of the housing. The Oshida device suffers from the same shortcomings as does the Hammes device. Both devices are constructed to engage a flat end surface to provide sealing properties.

In contrast, the o-ring seal of the instant invention cooperates with the outer frustoconical surface of the caulking tube nozzle. This construction permits the end surface of the nozzle to be cut at any desired angle. In addition, this construction prevents the O-ring from deflecting away from the sealing surface. This construction is best exemplified in Figure 7 of the instant application. Absent any motivation found within the prior art for this type of construction, it is respectfully submitted that the Examiner's combination of references can only be deemed hindsight reconstruction utilizing the instant disclosure, which is of course prohibited.

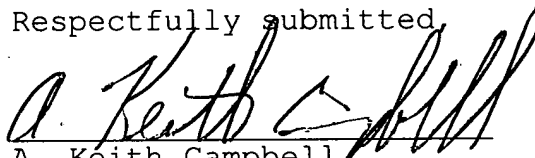
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SUMMARY

In light of the foregoing remarks and amendment to the claims, it is respectfully submitted that the Examiner will now find the claims of the application allowable. Favorable reconsideration of the application is courteously requested.

If there are any fees due in connection with the filing of this response, the Office is invited to charge Applicant's Deposit Account No. 13-0439.

Respectfully submitted,

  
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